

28.1381(A)(1)-APC

Actual Physical Control Defined

In determining whether the defendant was in “actual physical control” of the vehicle, you should consider the totality of circumstances shown by the evidence and whether the defendant's current or imminent control of the vehicle presented a real danger to [himself][herself] or others **at the time alleged**. Factors to be considered in any given case might include, but are not limited to:

1. Whether the vehicle was running;
2. Whether the ignition was on;
3. Where the ignition key was located;
4. Where and in what position the driver was found in the vehicle;
5. Whether the person was awake or asleep;
6. Whether the vehicle's headlights were on;
7. Where the vehicle was stopped;
8. Whether the driver had voluntarily pulled off the road;
9. Time of day;
10. Weather conditions;
11. Whether the heater or air conditioner was on;
12. Whether the windows were up or down;
13. Any explanation of the circumstances shown by the evidence.

This list is not meant to be all-inclusive. It is up to you to examine all the available evidence and weigh its credibility in determining whether the defendant actually posed a threat to the public by the exercise of present or imminent control of the vehicle while impaired.

SOURCE: **State v. Zaragoza**, 209 P.3d 629 (Ariz. 2009)
